THE HON'BLE SRI JUSTICE J.CHELAMESWAR
and
THE HON'BLE SRI JUSTICE D. APPA RAO

W.P. No.3108 of 2004

Dated: 12.10.2006

Between:-

M/s.Shivam Theatre and others.

..Petitioners

And

1. Government of Andhra Pradesh,
   Rep. by its Principal Secretary,
   Municipal Administration &
   Urban Development (ELE.II) Dept.
   Secretariat, Hyderabad and another.

..Respondents

ORDER: (per JC,J)

Eight partner-ship firms of the petitioners in this writ petition, each one of them is running cinema theatres located within the jurisdiction of the Gaddiannaram Municipality. Gaddiannaram Municipalilty was constituted to be a Grade-II Municipality some time in the year 2001. The Government of Andhra Pradesh in G.O.Ms.No.207 Municipal Administration & Urban Development (Ele.II) Department, dated 22-04-2003, declared Gaddiannaram Municipality to be a Grade-I Municipality. Such declaration was made in exercising the powers vested on the Government under Clause (22) of Section 2 of the A.P. Municipalities Act, 1965.

Each one of the theatres run by the petitioners herein is liable for payment of entertainment tax under Section 4 of the A.P. Entertainment Tax Act, 1939 (for short 'the Act') and such an amount is payable by the proprietor of the theatre. The expression 'proprietor' is a defined expression under sub section (9) of Section 2 of the Act. The details of which may not be necessary for the present purpose.

Under Section 5 of the Act, an option is given to the proprietors of the theatres to pay tax to the State Government every week at the rates specified in the third column of the table attached to Section on the gross collection capacity multiplied by definite integer**.** The expression gross collection capacity itself is explained under the explanation to sub section (1)

of Section 5 as follows:

> "Explanation:- For the purpose of computing the gross collection capacity per show in respect of any place of entertainment the maximum seating capacity or accommodation and the maximum rate of payment for admission determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955 (President's Act IV of 1955) as on the date when the proprietor is permitted to pay tax under this section shall be taken into account.
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> (2) The amount of tax under sub-section (1) shall be payable by the proprietor irrespective of the actual number of shows held by him in a week.

The procedure for exercising the option and the legal consequences are stipulated under sub-sections 3 to 9 of Section 5 as follows:

> (3) Any proprietor who opts to pay tax under this section shall apply in the prescribed form to the prescribed authority to be permitted to pay the tax under this section.
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> (4) On being so permitted, such proprietor shall pay the tax for every week as specified in sub-section (1).
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> (5) The option permitted under this section shall continue to be in force till the end of the financial year in which such option is permitted.
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> (6) It shall be lawful for the prescribed authority to vary the amount of tax payable by the proprietor under sub-section (1) during the period of option permitted under this section at any time,-
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> (a) where the amount of tax payable under sub-section (1) has been modified by law; or
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> (b) if there is an increase in the gross collection capacity per show in respect of the place of entertainment by virtue of an upward revision of the rate of payment for admission therein or of the seating capacity or accommodation thereof; or
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> (c) where the local area in respect of which permission is

granted is upgraded; or

(d) if it is found for any reason that the amount of tax has been fixed lower than the correct amount;

(6-A) Notwithstanding anything contained in sub-section (6), it shall be lawful for the prescribed authority to reduce the amount of tax payable by the proprietor under sub-section (1) if there is reduction in the seating capacity or in the accommodation of the place of entertainment at any time during the period of six months commencing from the 1st day of April and ending with 30th day of September or from the 1st day of October and ending with 31st day of March of any financial year).

(7) Every proprietor who has been permitted to pay the tax under this section shall intimate to the prescribed authority forth with such increase in the gross collection capacity per show in respect ;of the place of entertainments, failing which it shall be open to the prescribed authority by giving fifteen days notice to cancel the option so permitted.

(8) Where a proprietor fails to pay the amount of tax on the due date such amount of tax shall be recoverablel with interest calculated at such rate as may be prescribed.

(9) The amount of tax due under this section shall be rounded off to the nearest rupee and for this purpose, where such amount contains part of a rupee consisting of paise, then, if such part is fifty paise or more it shall be increased to one rupee and if such part isles than fifty paise, it shall be ignored.)

It can be seen from the explanation that both the maximum seating capacity of a particular theatre and the maximum rate of payment for admission determined by the licensing authority under A.P. Cinema Regulation Act 1955 are required to be taken into consideration. It is to be seen further that these two factors are to be taken into consideration as they obtained as on the date when on which the proprietor is permitted to pay tax under Section 5 of the Act. Rule 11-B of the A.P. Cinemas (Regulation) Rules, 1950, contemplates granting of licence to cinema building. It is

admitted on all the hands that a normal period of licence is one year; To be renewed thereafter from time to time subject to satisfaction of the licensing authority. Under sub rule (3) (a) of Rule 11-B of the Rules, 1970, the Licensing Authority either while granting the licence or renewing, is also required to fix the maximum rate for admission for different classes in the theatre. It is further stipulated in sub clause (b) of Rule 11-B of the Rules, 1970 that the rates so fixed by the licensing authority shall not be increased during the current year of the licence except with an order in writing of the licensing authority permitting such increase.

It is brought to our notice that the Government of Andhra Pradesh in exercise of the executive power of the State issued orders from time to time fixing the maximum rates for admission into the different classes of theatres depending upon their location either a corporation or a municipal area etc.,

The State of Andhra Pradesh so fixed the maximum rate of admission once in G.O.Ms.No.240 Home, dated 28-03-1991 which was amended by G.O.No.612 Home, dated 17-12-1992 only with reference to the lowest class.

Eventually, in G.O.Ms.No.538 Home, dated 11-07-1994, the Government left it open to the managements of the theatres to fix the rates of admission to the higher classes while regulating the rates of admission to the lowest classes in the theatres as stipulated in G.O.No.612 referred to earlier. The relevant portion of G.O.Ms.No.538 reads as follows:

> "The matter has been discussed with the representatives of the Film Industry. After careful consideration, Government hereby direct that the matter fixation/enhacement of rates of admission in respect of higher classes be left to the theatre managements. But, in respect of the lowest class in the theatres, the rates prescribed by Government in the G.O. second read above shall be followed irrespective of the number of Classes maintained in the theatres."

All the petitioners herein claim that each of them opted for the mode of assessment prescribed under Section 5 of the Act and the said fact is not disputed by the respondents. Consequently, their liability for the financial year commencing from 1st April, 2003 and ending with 31st March, 200 was fixed at 17% of the gross collection capacity per show multiplied by 21 per week. Sub section 5 of Section 5 of the Act reads as follows:

> "(5) The option permitted under this section shall continue to be in force till the end of the financial year in which such option is permitted."

However, by virtue of the G.O.Ms.No.207, dated 22-0-2003, which is impugned in the present writ petition, Gaddiannaram Municipality came to be notified as Grade-I Municipality (popularly called "Upgraded 1st Grade Municipality). Consequently, the 2nd respondent issued proceedings dated 30-12-2003 to each one of the petitioners calling upon them to pay the entertainment tax at the enhanced percentage applicable to the Grade-I Municipalities prescribed under Section 5 of the Act. The relevant portion of such proceedings received by one of the petitioners is as follows:

> "While communicating copy of the G.O.Ms.No.207 M.A. & U.D. you are informed to pay the Entertainment Tax with effect from 22-0-2003 at enhanced rate of percentage in Grade-I Municipality as prescribed in A.P. Entertainment Tax Act."

The result is while each one of the theatres owned by the petitioners was required to pay only 17% of the gross collection capacity

while Gaddiannaram Municipality was the 2nd Grade Municipality, now is required to pay at the rate of 18%, 21% and 22% of the gross collection capacity per show multiplied by 21 each, respectively, depending upon whether the particular theatre is air-conditioned one or cooled or otherwise. Hence, this Writ Petition with a prayer as follows:-

> "To declare G.O.Ms.No.207.MA, dated 22-04-2003 of the 1st respondent as in applicable to the petitioners for the purpose of demand of Entertainment Tax as per the Table for Grade-I Municipality under the A.P. Entertainment Tax Act 1939 and consequentially set aside the demand of the 2nd respondent in demanding the Entertainment Tax levied as per Grade-I Municipality under the Table provided in the Entertainment Tax Act as without power, Jurisdiction and in violation of Section 389-A of the A.P. Municipalities Act r/w. Explanation-II of Section (1) of the A.P. Entertainment Tax Act."

Though various issues are raised in the writ petition, the only issue argued by the learned counsel for the petitioners is that the demand on the part of the 2nd respondent to pay the tax at an enhanced percentage of the gross collection capacity per show is illegal. The learned counsel submitted that once the proprietor of a theatre opted for payment of tax as prescribed under Section 5 of the Act, by virtue of sub section (5) of Section 5 of the Act, the option so permitted shall continue to be in force till the end of the financial year in which such option is permitted.

The fact that prior to the issuance of impugned G.O.No.207, each of the petitioners was permitted to opt for the mode of assessment under Section 5 of the Act for the relevant financial year is not in dispute. The learned counsel for the petitioners therefore argued that though the 2nd respondent is authorized under sub-section (6) to vary the amount of tax payable by the petitioners during the period of option, such exercise is

permissible only in the four contingencies specified under sub section (6) of Section 5 of the Act.

Undoubtedly, the up-gradation of local area in which the theatre is located is one of the contingencies as contemplate under the said sub section. However, the learned counsel for the petitioners argued that having regard to sub section (6) of Section 5 of the Act, the variation contemplated under sub section (6) is not automatic on the up-gradaion of the local area, but requires a specific decision on the part of the prescribed authority (2nd respondent herein, in the context of the case). The learned counsel for the petitioners laid emphasis on the opening clause of sub section (6) of Section 5 of the Act, which says that "it shall be lawful".

The learned counsel for the petitioners relied upon a decision of the Supreme Court in **MADANLAL FAKIRCHAND DUDHEDIYA v. SHREE CHANGDEO SUGAR MILLS LTD**[1] **i**n support of his submission. The Supreme Court in the above said decision, quoted with approval of decision of the House of Lords in **JULIUM v. BISHOP OF OXFORD**[2]**,** wherein the House of Lords held as follows:

> "The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power."

The learned counsel for the petitioners, therefore, argued that sub section (6) of Section 5 of the Act only authorizes the variation of the rate of tax even in the contingency of the up-gradation of the local area in which it is located. The decision to so vary the rate of tax was taken only on 30-12-

2003 and communicated to the petitioner on 27-01-2004, therefore decision could not be taken retrospectively with effect from the date of G.O.Ms.No.207 as so sought to be done by the 2nd respondent in his proceedings, dated 30-12-2003.

On the other hand the learned Government Pleader appearing for the respondents argued that having regard to the scheme of the Act, more particularly, Section 5 where a higher rate of tax is prescribed for the entertainments held in the 1st Grade Municipalities, the liability of the petitioners who owned theatres in a Municipality which was earlier classified as a 2nd Grade Municipality, but came to be upgraded as a 1st Grade Municipality by virtue of G.O. Ms. No. 207, is automatic by virtue of the operation of the law. The 2nd respondent in issuing the impugned notice was only intimating the petitioners of their liability to pay the tax at a higher rate with effect from the date of the above mentioned G.O. which was published in the Gazette of Ranga Reddy District in which district the Gaddiannaram Municipality is situated. Therefore, the petitioners cannot claim ignorance of the fact of the upgradation of the Municipality. The impugned notice by the 2nd respondent is only a demand of the amount legally due from the petitioners.

The learned Government Pleader also submitted that accepting the submission of the petitioners that their liability to pay the tax at a higher rate commences only from the date of the receipt of the demand notice on the premise that having regard to the opening clause of sub-section (6), it requires a further decision by the prescribed authority to vary the amount of tax, would lead to an anomalous situation like different dates would be

applicable to different theatres situated in the same Municipality depending upon the accident of the date on which the demand notice is issued. The learned Government Pleader therefore submitted that placing such a construction as the one placed by the House of Lords on the opening clause of sub-section (6) should be avoided in the context of the present case as it is a settled principle of Interpretation of Statutes that a construction which leads to anomalous results should be eschewed.

Sub-section (6) contemplates the variation of entertainment tax in four contingencies. (1) Where by virtue of the operation of a law the amount payable is modified (2) Where there is an increase in the gross collection capacity either by virtue of the revision of the rate of admission or increase in the seating capacity or (3) where the local area is upgraded and (4) lastly if it is found that the amount of tax fixed under sub-section (1) is not in accordance with law.

The opening clause of sub-section (6) if it is construed to be only an enabling clause permitting the prescribed authority to revise/vary the tax even in a case where by virtue of a change in the law subsequent to the fixation of the amount of tax under sub-section (1) of Section 5, it would virtually amount to permitting the executive authorities responsible for the implementation of law to ignore the law till such time as they choose. Such an interpretation would lead to a situation of the subversion of the rule of law. So also is the case of up gradation of the municipality.

In the circumstances, we see substantial force in the submission made by the learned Government Pleader. As rightly pointed out by the learned Government Pleader accepting the submission as the one made by the petitioner would lead to anomalous results in the enforcement of

the law and such a construction must be eschewed. The said sub-section must be understood as having authorized the prescribed authority to demand the appropriate amount in accordance with law, in any one of the four contingencies contemplated therein not withstanding the declaration contained in sub-section (5).

We therefore do not see any merit in the writ petition and the writ petition is therefore dismissed.

(J.CHELAMESWAR, J)

(D.APPARAO, J)

12h October, 2006.
Kvr/knk

[1] AIR 1962 SUPREME COURT 1543
[2] 1880-5 AC 21